

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
KATHLEEN C. GREEN,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondents.

PCHB No. 79-184

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

THIS MATTER, the appeal of an order of the Department of Ecology approving a surface water diversion for a lesser quantity than was applied for, came on for hearing before the Pollution Control Hearings Board, William A. Harrison, hearing examiner, convened in Wenatchee, Washington on March 11, 1980. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant Kathleen C. Green appeared and represented herself. Respondent appeared by Wick Dufford, Assistant Attorney General. Reporter Lynette Friese recorded the proceedings.

1 Having heard or read the testimony, having examined the exhibits,  
2 having considered the contentions of the parties; and the Board having  
3 served its proposed decision upon the parties herein, and having  
4 received exceptions thereto; and the Board having considered the  
5 exceptions, and having granted the exceptions in part and denied said  
6 exceptions in part, the Board now makes these

7 FINDINGS OF FACT

8 I

9 Appellant, Kathleen C. Greene, owns and resides part time on land  
10 north of Chelan in an area known as Union Valley (Section 19, T28N,  
11 R23E). Appellant applied to respondent, Department of Ecology (DOE)  
12 on January 26, 1979, to appropriate public surface water for both  
13 domestic use and irrigation of 15 acres. Appellant seeks to grow  
14 "wheat or a similar crop" and selected 15 acres because that is the  
15 number of level acres within her ownership.

16 II

17 On July 30, 1979, the DOE inspector in charge of appellant's  
18 application conducted a site inspection of the proposed point of  
19 appropriation, an unnamed, intermittent spring in the northwest  
20 corner of appellant's land. No water appeared at the surface on that  
21 date. DOE next computed a "water budget" for the site in question  
22 which is recharged only by precipitation. The annual precipitation is  
23 approximately 11" per year, falling onto a drainage area of some 250  
24 acres above and serving the proposed point of appropriation. This  
25 would provide some 230 acre feet of water per year of which 90% will  
26 be lost to runoff or evapotranspiration. The remaining 10%, or 23

1 acre feet per year, will go underground and flow at shallow depths  
2 atop granitic bedrock. This 23 acre feet is then available for  
3 diversion in the general area where appellant seeks to appropriate,  
4 although appellant's proposed single point of diversion could not  
5 intercept the entire 23 acre foot flow. Assuming even that it could,  
6 however, the irrigation season of four months would leave only 1/3 of  
7 the 23 acre feet annual flow available during irrigation season, or 8  
8 acre feet. The actual quantity available on a sustained basis at the  
9 proposed point of appropriation is approximately 2 acre feet per  
10 year. (This water budget could be recalculated using the maximum  
11 annual precipitation to be expected, 15", without changing the outcome  
12 in any way material to this case.)

13 The water requirement for domestic use (home and 1/2 acre garden)  
14 is approximately 2 acre feet per year. The water duty for irrigation  
15 of appellant's acreage is 30-45 acre feet per year. The minimum total  
16 proposed for appropriation, 32 acre-feet per year, exceeds the  
17 quantity of water available, 2 acre feet per year, although sufficient  
18 water is available for domestic use only.

### 19 III

20 On September 18, 1979, DOE ordered the issuance of a surface water  
21 appropriation permit to appellant for 2 acre feet per year "for a  
22 single domestic supply."

### 23 IV

24 Any Conclusion of Law which should be deemed a Finding of Fact is  
25 hereby adopted as such.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

CONCLUSIONS OF LAW

I

The Water Code, provides that a permit such as appellant applied for shall issue "if there is water available for appropriation." RCW 90.03.290. DOE correctly approved appropriation of only the amount of water available in this instance, and the DOE order should therefore be affirmed.

II

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board issues this

ORDER

The Department of Ecology's Order under Application Number S4-26113 for appropriation of public surface water is hereby affirmed.

DONE at Lacey, Washington, this 13<sup>th</sup> day of June, 1980.

POLLUTION CONTROL HEARINGS BOARD

  
MAT W. WASHINGTON, Chairman

  
DAVID AKANA, Member